

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION ON:

Education Code Section 52056(c)
Statutes 1999, 1st Extraordinary Session,
Chapter 3 (SBX1-1) and Statutes 2000,
Chapter 695 (SB 1552)

As Alleged to be Modified by:

Statutes 2013, Chapter 47 (AB 97)

Filed on March 8, 2019

By the Department of Finance, Requester

Case No.: 18-MR-01

Academic Performance Index (01-TC-22)

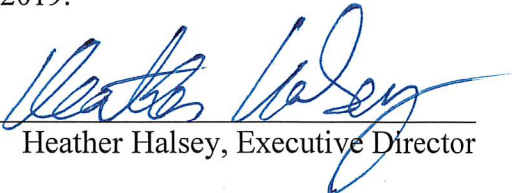
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500, ET SEQ.; CALIFORNIA CODE
OF REGULATIONS, TITLE 2,
DIVISION 2, CHAPTER 2.5,
ARTICLE 7.

(Adopted November 22, 2019)

(Served November 26, 2019)

MANDATE REDETERMINATION

The Commission on State Mandates adopted the attached new Test Claim Decision that supersedes the previously adopted Test Claim Decision on November 22, 2019.


Heather Halsey, Executive Director

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 STATE OF CALIFORNIA

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 SECOND HEARING: NEW TEST CLAIM
 DECISION ON:

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 DIVISION 2, CHAPTER 2.5,
 ARTICLE 7.
 (Adopted November 22, 2019)
 (Served November 26, 2019)

DECISION

The Commission on State Mandates (Commission) heard and decided this Mandate Redetermination during a regularly scheduled hearing on November 22, 2019. Daniel Hanower appeared on behalf the Department of Finance (Finance).

Government Code section 17570 and section 1190.1 et seq. of the Commission’s regulations establish the mandate redetermination process. In addition, the law applicable to the Commission’s determination of a reimbursable state-mandated program are article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181.1 et seq., and related case law.

The Commission adopted the Proposed Decision as its new Test Claim Decision to supersede the previously adopted Test Claim Decision by a vote of 7-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Mark Hariri, Representative of the State Treasurer	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Jaqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

Summary of the Findings

The Commission finds the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for *Academic Performance Index*, 01-TC-22, has been modified based on a subsequent change in law. Specifically, Statutes 2013, chapter 47, section 102 expressly repealed Education Code section 52056, the statute that imposed the mandate. Thus, with repeal of the test claim statute, Education Code section 52056(c) no longer imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, and school districts are no longer incurring costs mandated by the state pursuant to Government Code section 17514 to comply with Education Code section 52056(c). With the mandate repealed, the reasonably necessary activities approved in the Parameters and Guidelines are no longer necessary to comply with the mandate.

Pursuant to Government Code section 17570, the Commission approves the request for a new test claim decision to supersede the previously adopted Decision based on a subsequent change in law and concludes that the mandated program found in *Academic Performance Index*, 01-TC-22, no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 beginning July 1, 2017.

COMMISSION FINDINGS

I. Chronology

03/08/2019	The Department of Finance (Finance) filed the Request for Mandate Redetermination. ¹
05/08/2019	The State Controller's Office (Controller) filed comments on the Mandate Redetermination. ²
09/27/2019	The Commission adopted the Decision, First Hearing and directed Commission staff to notice the second hearing. ³
09/27/2019	Commission staff issued the Draft Proposed Decision, Second Hearing. ⁴

II. Background

On July 31, 2009, the Commission adopted the Test Claim Statement of Decision in *Academic Performance Index*, 01-TC-22, finding that Education Code section 52056(c), as added and amended by the test claim statutes imposed a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

¹ Exhibit A, Request for Mandate Redetermination.

² Exhibit D, Controller's Comments on the Request for Mandate Redetermination.

³ Exhibit E, Decision, First Hearing.

⁴ Exhibit F, Draft Proposed Decision, Second Hearing.

Education Code section 52056(c) was part of the Public Schools Accountability Act of 1999 (PSAA),⁵ which established a new statewide school accountability system.⁶ To measure the level of achievement under the new accountability system, PSAA established the Academic Performance Index (API) as a method for measuring the performance of schools, especially the academic performance of pupils, and for demonstrating comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.⁷ The Test Claim Statement of Decision explains the API as follows:

A school's API is a number that ranges from 200 to 1000 and is calculated from the results for each school's students on statewide tests. The state has set 800 as the API target for all schools to meet. Schools that fall short of 800 are required to meet annual growth targets until that goal is achieved. API targets vary for each school.⁸

The PSAA, in Education Code sections 52056-52058, also established the High Achieving/Improving Schools Program, an incentive program that monitored schools' progress, and provided monetary and non-monetary rewards pursuant to a Governor's Performance Award Program for schools that meet or exceed performance targets or demonstrate high achievement. As part of the program, the Superintendent of Public Instruction (SPI) was required to annually rank all public schools by the value of the API in decile categories by grade level, and by the value of the API when compared to schools with similar characteristics (such as pupil ethnicity, pupil socioeconomic status, etc.), and to report the target annual growth rates of schools and the actual growth rates attained.⁹ The SPI was also required to publish the rankings on the Internet.¹⁰ The school district governing boards were then required to "discuss the results of the annual ranking" at a regularly scheduled meeting, pursuant to section 52056(c).

The Commission found that only subdivision (c) of section 52056 imposed a reimbursable state-mandated activity for the governing board to discuss the results of its annual ranking at the next

⁵ Former Education Code sections 52050 -52058.

⁶ As enacted, the Public Schools Accountability Act of 1999 consisted of three component parts: (1) the Academic Performance Index (API) (§ 52052), a method of measuring pupil performance; (2) the Intermediate Intervention/Underperforming Schools Program (II/USP) (§§ 52053 – 52055), an intervention and sanctions program to assist low-performing schools; and (3) the Governor's High Achieving/Improving Schools Program, an incentive program that rewards high-performing schools pursuant to a Governor's Performance Award Program (§§ 52056 – 52058).

⁷ Former Education Code section 52052.

⁸ Exhibit B, Test Claim Statement of Decision, page 3 (citing to California Department of Education "Parent and Guardian Guide to California's 2008-09 Accountability Progress Reporting System.")

⁹ Former Education Code section 52056(a).

¹⁰ Former Education Code section 52056(a).

regularly scheduled meeting following the annual publication of the API and the SPI's school rankings.¹¹ All other statutes and regulations pled in the Test Claim were denied.¹²

On May 27, 2010, the Commission adopted the Parameters and Guidelines approving reimbursement, beginning July 1, 2000, for the reimbursable activity approved in the Test Claim Statement of Decision. The Commission also approved reimbursement, pursuant to former section 1183.1 of the Commission regulations, for the following activities found to be the "most reasonable methods of complying with the mandate:" obtaining the annual API data from the State's website and preparing a staff report, including a PowerPoint presentation, for the governing board's discussion.¹³ Thus, Section IV. of the Parameters and Guidelines identifies the reimbursable activities as follows:

For each eligible claimant, the following activity is reimbursable:

For a school district governing board to discuss the results of its annual Academic Performance Index (API) ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings.

Reimbursement is allowed for obtaining the annual API data from the State's website and preparing a staff report, including a PowerPoint presentation, for the governing board's discussion. (Ed. Code §, 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25, 1999, Stats. 2000, ch. 695.)

This activity is **not** reimbursable for schools with fewer than 100 valid test scores, or schools in the alternative accountability system that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, alternative schools, including continuation high schools and opportunity schools and independent study schools. (Ed. Code, § 52052, subd. (f)(1), Stats. 2001, ch. 887 & Cal. Code Regs., tit. 5, § 1032, subd. (b).)

In addition, reimbursement is **not** required to analyze the API data, including STAR test scores, for changes in longitudinal performance of schools, to identify schools that change ranks, to measure achievement gaps between student groups, and to compare district performance with other urban districts pursuant to Education Code section 52056, subdivisions (c) and (d), as amended by Statutes 2003, chapter 45.¹⁴

The Alleged Subsequent Change in Law

Statutes 2013, chapter 47, was a budget bill that replaced existing revenue limits and categorical funding provided to schools with the Local Control Funding Formula (LCFF), effective July 1, 2013. As part of the bill, section 102 repealed Article 4 of Chapter 6.1 of Part 28 of

¹¹ Exhibit B, Test Claim Statement of Decision, page 41.

¹² Exhibit B, Test Claim Statement of Decision, page 41.

¹³ Exhibit G, Final Staff Analysis and Proposed Parameters and Guidelines (Item 7), May 27, 2010, pages 6-7.

¹⁴ Exhibit C, Parameters and Guidelines, pages 2-3, emphasis in original.

Division 4 of Title 2 of the Education Code, commencing with section 52056, thereby repealing the High Achieving/Improving Schools Program.

On September 27, 2019, at the first hearing, the Commission heard and adopted the Decision finding that the requester identified a subsequent change in law, as defined, and made an adequate showing that the request, considered in light of all evidence in the record, had a substantial possibility of prevailing at this second hearing.¹⁵

III. Positions of the Parties, Interested Parties, and Interested Persons

A. Department of Finance, Requester

Finance asserts that Statutes 2013, chapter 47 “repealed the requirement that school district governing boards must discuss their annual ranking following the annual publication of the API school rankings.”¹⁶

Finance concludes that “the reimbursable activities identified in the Academic Performance Index Statement of Decision (01-TC-22) cease to be eligible for reimbursements effective July 1, 2018. Therefore, based on the change in law, the state’s liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero.”¹⁷

In addition, Finance states that “According to the State Controller's Office April 30, 2018, "State Mandated Program Cost Report of Unpaid Claims and Deficiency Pursuant to Government Code Section 17562(b)(2)," school districts claimed \$1,203 in 2016-17, \$1,090 in 2015-16, and \$1,182 in 2014-15 for activities related to the Academic Performance Index.”¹⁸ Finance did not file comments on the Draft Proposed Decision, Second Hearing.

B. State Controller’s Office

The Controller concurs with Finance’s request to adopt a new test claim decision “to supersede the prior decision on the Academic Performance Index mandate program based upon the repeal of the authorizing statute.”¹⁹ The Controller did not file comments on the Draft Proposed Decision, Second Hearing.

¹⁵ Exhibit E, Decision, First Hearing.

¹⁶ Exhibit A, Request for Mandate Redetermination, page 4. Finance also states that “[g]iven the repeal of the authorizing statute, any required activities pursuant to the California Code of Regulations related to the API are unsupported by statute and should no longer be a basis for mandated activities.” (Exhibit A, Request for Mandate Redetermination, page 4.) The Commission denied all regulations pled in the Test Claim, and approved only Education Code section 52056(c), as added and amended by Statutes 1999, 1st Extraordinary Session, Chapter 3 (SBX1-1), and Statutes 2000, Chapter 695 (SB 1552). (Exhibit B, Test Claim Statement of Decision, page 41.)

¹⁷ Exhibit A, Request for Mandate Redetermination, page 5.

¹⁸ Exhibit A, Request for Mandate Redetermination, page 5.

¹⁹ Exhibit D, Controller’s Comments on the Request for Mandate Redetermination, page 1.

C. School Districts

No comments have been filed by any of the eligible claimant school districts or any of the school district associations that represent them.

IV. Discussion

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the state’s liability. Government Code section 17570 provides for a two-step hearing process. At the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution.”²⁰

California Code of Regulations, title 2, section 1190.5(b)(1) provides that “[i]f the Commission proceeds to the second hearing, it shall consider whether the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.”²¹

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”²² Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”²³

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.²⁴
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or

²⁰ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

²¹ California Code of Regulations, title 2, section 1190.5(b)(1) (Register 2014, No. 21).

²² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

²⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

- b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.²⁵
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.²⁶
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.²⁷

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.²⁸ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.²⁹ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”³⁰

Therefore, the issue before the Commission at this second hearing is whether the state’s liability has been modified based on a subsequent change in law and, if so, whether to adopt a new test claim decision to supersede the previously adopted test claim decision, reflecting the state’s modified liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.³¹

A. Statutes 2013, Chapter 47, a Subsequent Change in Law within the Meaning of Government Code Section 17570, Eliminates the State’s Liability for the *Academic Performance Index*, 01-TC-22 Program beginning July 1, 2017.

At the first hearing on this matter, the Commission found that Statutes 2013, chapter 47, which repealed the test claim statute in *Academic Performance Index*, 01-TC-22, constitutes a

²⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

²⁶ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

²⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

²⁸ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

²⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

³⁰ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

³¹ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

subsequent change in law,³² and now finds that this subsequent change in law has modified the state's liability for the program within the meaning of Government Code section 17570.

In the Test Claim Statement of Decision for *Academic Performance Index*, 01-TC-22, the Commission found that Education Code section 52056(c), imposed a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for a school district governing board to discuss the results of its annual ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings.³³ All other test claim statutes and regulations were denied.³⁴

The Parameters and Guidelines approved reimbursement for the activity mandated by Education Code section 52056(c) and the following activities found to be "the most reasonable methods of complying with the mandate:" obtain the annual API data from the State's website and prepare a staff report, including a PowerPoint presentation, for the governing board's discussion.

Section IV. of the Parameters and Guidelines identifies the reimbursable activities as follows:

For a school district governing board to discuss the results of its annual Academic Performance Index (API) ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings. Reimbursement is allowed for obtaining the annual API data from the State's website and preparing a staff report, including a PowerPoint presentation, for the governing board's discussion. (Ed. Code §, 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25, 1999, Stats. 2000, ch. 695.)³⁵

Statutes 2013, chapter 47, section 102, effective July 1, 2013, expressly repealed the test claim statute, Education Code section 52056, which imposed the mandate in subdivision (c) for the school district governing boards to discuss the results of the annual ranking following the annual publication of the API and SPI school rankings.

Local agencies and school districts are only entitled to reimbursement under article XIII B, section 6 when the costs incurred are mandated, or "ordered" or "commanded," by the state.³⁶ Activities undertaken at the option or discretion of local government, without legal compulsion or compulsion as a practical matter, do not trigger a state-mandated program within the meaning of article XIII B, section 6.³⁷

³² Exhibit E, Decision, First Hearing.

³³ Exhibit B, Test Claim Statement of Decision, page 41.

³⁴ Exhibit B, Test Claim Statement of Decision, page 41.

³⁵ Exhibit C, Parameters and Guidelines, pages 2-3, emphasis in original.

³⁶ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174; Government Code section 17514.

³⁷ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731 (Kern High School Dist.); *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1365-1366 (POBRA).

Thus, with the repeal of the test claim statute, Education Code section 52056(c) no longer imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, and school districts are no longer incurring costs mandated by the state pursuant to Government Code section 17514 to comply with the requirement to discuss the results of its annual ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings. With the mandate repealed, the reasonably necessary activities approved in the Parameters and Guidelines to obtain the annual API data from the State's website and prepare a staff report, including a PowerPoint presentation, for the governing board's discussion, are no longer necessary to comply with the mandate.

Accordingly, with the repeal of Education Code section 52056(c) by Statutes 2013, chapter 47, the state's liability with respect to the *Academic Performance Index* program has been modified based on a subsequent change in law ending the mandate.

Finance urges the Commission to end the state's liability for *Academic Performance Index*, 01-TC-22 program on July 1, 2018.³⁸ However, the period of reimbursement affected by a mandate redetermination is established by law and is based on the filing date of a request for mandate redetermination. Government Code section 17570(f) states that "[a] request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year."³⁹ Here the Request for Mandate Redetermination was filed March 8, 2019 (fiscal year 2018-2019), establishing a loss of reimbursement beginning July 1, 2017.⁴⁰

Thus, in accordance with Government Code section 17570(f), the Commission finds that the *Academic Performance Index*, 01-TC-22, program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning July 1, 2017.

V. Conclusion

Based on the foregoing, the Commission approves the Request for Mandate Redetermination and concludes that the *Academic Performance Index*, 01-TC-22, mandate has ended based on a subsequent change in law and does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 beginning July 1, 2017.

³⁸ Exhibit A, Request for Mandate Redetermination, page 5.

³⁹ See also, California Code of Regulations, title 2, section 1190.1(f).

⁴⁰ Exhibit A, Request for Mandate Redetermination.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On November 26, 2019, I served the:

- **Decision and Amendment to Parameters and Guidelines adopted November 22, 2019**
- **Decision, Second Hearing adopted November 22, 2019**

Second Hearing: New Test Claim Decision

Academic Performance Index (01-TC-22), 18-MR-01

Education Code Section 52056(c); Statutes 1999, 1st Extraordinary Session,

Chapter 3 (SBX1-1); Statutes 2000, Chapter 695 (SB 1552); as alleged to be modified by Statutes 2013, Chapter 47 (AB 97)

Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 26, 2019 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/13/19

Claim Number: 18-MR-01

Matter: Academic Performance Index (01-TC-22)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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